

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

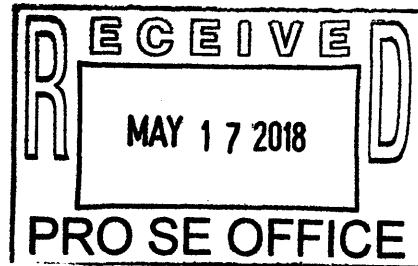
v.

PATRICK K. MCDONNELL,
and CABBAGETECH, CORP. d/b/a COIN
DROP MARKETS,

Defendants.

Case No. 18-CV-00361 (JBW) (RLM)

NOTICE OF MOTION TO DISMISS



PLEASE TAKE NOTICE that Defendant Patrick K. McDonnell respectfully moves the Court to reconsider dismissal of Plaintiff COMPLAINT FOR INJUNCTIVE AND OTHER EQUITABLE RELIEF AND FOR CIVIL MONETARY PENALTIES UNDER THE COMMODITY EXCHANGE ACT AND COMMISSION REGULATIONS *dismissing*;

All Count(s) for alleged violations of THE COMMODITY EXCHANGE ACT AND COMMISSION REGULATIONS; **"Specifically" Count I--Fraud by Deceptive Device or Contrivance; Violations of § 6(c)(1) of the Act and Regulation 180.1(a).**

MAY THE COURT RECOGNIZE; § 6(c)(1) of the COMMODITY EXCHANGE ACT AND COMMISSION REGULATIONS 'only' prohibits "fraud-based market manipulation".

Plaintiff is not afforded regulatory authority and/or scope of enforcement jurisdiction over Defendants' alleged transaction(s) under § 6(c)(1) rendering Plaintiff Complaint dismissive lacking subject-matter jurisdiction and/or personal jurisdiction with Plaintiff Complaint failing to state a claim upon relief can be granted. *Thus*, meriting full dismissal of Plaintiff claim(s).

Basis for Defendant Motion are set forth in the accompanying **MEMORANDUM OF LAW**.

Defendant again, moves the Court to dismiss Plaintiff Complaint and alleged Count(s) **'with prejudice'** citing Plaintiff lack of; **Subject-matter jurisdiction** (pursuant to Rule 12 (b)(1), Fed. R. Civ. P.) and/or **Personal jurisdiction** (pursuant to Rule 12 (b)(2), Fed. R. Civ. P.) and specifically for Plaintiff **Failure to state a claim upon relief can be granted** (pursuant to Rule 12 (b)(6), Fed. R. Civ. P.) Id. quoting *"If the Court determines at any time that it lacks subject-matter jurisdiction, the Court must dismiss the action."* at Fed. R. Civ. P. Rule 12 (h)(3).

In support of this **MOTION TO DISMISS**, Defendant submits the following documents;

- ☒ defendant declaration in support of motion to dismiss
- ☒ memorandum of law in support of motion to dismiss
- ☒ exhibit 1; (United States District Court, C.D. California. *COMMODITY FUTURES TRADING COMMISSION v. MONEX CREDIT COMPANY, et al.* Case No. SACV 17-01868 JVS (DFMx) 5/1/18 Westlaw Citation ["2018 WL 2110935"] 11 pages.)
- ☒ exhibit 1a; 6351-01-P [COMMODITY FUTURES TRADING COMMISSION 17 CFR Part 1 RIN 3038-AE62 Retail Commodity Transactions Involving Virtual Currency. -- Actual Delivery of Virtual Currency -- (*Prepared by the CFTC*)] -- ACTION: "Proposed interpretation"; request for comment. (**NOTE: Proposed vs Law.**)

cc: CFTC
May 14, 2018

Respectfully Submitted,



Defendant/Pro Se

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